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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,538	07/09/2003	Tatsuya Masuki	59549 (71360)	1953

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT PAPER NUMBER

1772

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/616,538

Applicant(s)

MASUKI ET AL.

Examiner

Walter B. Aughenbaugh

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-7 and 10.
Claim(s) withdrawn from consideration: 8 and 9.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

JENNIFER C. MCNEIL
SUPERVISORY PATENT EXAMINER

8/9/06

ADVISORY ACTION

Acknowledgement of Applicant's Amendments

1. The After Final Amendment filed July 24, 2006 has not been entered due to the fact that the amendment raises new issues that would require further consideration and/or search. The addition of the recitation "container body and" in the last line of claim 1 requires further consideration and/or search since the claim language prior to the After Final Amendment does not require that the container body is "formed by injection-molding".

Response to Arguments

2. Applicant's arguments regarding the 35 U.S.C. 112, first paragraph, rejection of claims 1, 4 and 5 have been fully considered but are not persuasive.

The issues raised in previous Office Actions have not been addressed in Applicant's arguments in the After Final Amendment. Office Action mailed March 23, 2005, pages 3-4; Office Action mailed November 2, 2005, pages 3 and 9; Office Action mailed April 24, 2006, page 3.

Applicant has not convincingly shown that the three properties are indeed distinguishable properties. It is unclear what portion of the subject matter of the discussion in the last full paragraph of page 4 of the After Final Amdt. is actually supported in the specification.

Exhibit B does not show that "surface waviness" and "sink mark depth" are distinguishable from each other and that each are distinguishable from "flatness". Applicant's discussion in the last full paragraph of page 5 of the After Final Amdt. does not appear to address the rejection of record.

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Properties having the names “surface waviness” and “sink mark depth” could not be located in the attached copy of JIS 0601-2001, and Applicant has not explained how/where these properties are disclosed in JIS 0601-2001. Applicant has only cited sections 3.1.4 and 3.1.5 of JIS 0601-2001, which do not discuss “surface waviness”, “sink mark depth” or “flatness”. Applicant’s statement that “surface waviness” and “sink mark depth” are “used consistent with the description in the art” is not supported. Applicant has conspicuously not included a JIS standard for Applicant’s “flatness” property. Applicant has not shown how “flatness” is distinguished from “surface waviness”.

3. Applicant’s arguments regarding the 35 U.S.C. 103 rejection of claims 1-7 and 10 are moot since the After Final Amdt. has not been entered for the reason provided above in this Advisory Action.

Applicant argues that Bird does not teach that the recessed flat portion is formed by injection molding, but Bird teaches that the recessed flat portion (bottom wall 116) is formed by injection molding since Bird teaches that the web 200 of thermoplastic polymer is supplied as a preformed sheet by continuous injection molding to a mold or die 204 that thermoforms the web (col. 12, lines 46-56). Since the pockets 112 are formed from web 200 (col. 12, lines 44-56), and since bottom wall 116 is the bottom wall of each pocket 112 (col. 6, line 26), the recessed flat portion (bottom wall 116) of Bird is formed by injection molding. Consequently, the container taught by Bird, Satake et al. and Sylvester et al. as proposed in the 35 U.S.C. 103 rejection of claims 1-7 and 10 made of record in paragraph 9 of the Office Action mailed November 2, 2005 comprises a recessed flat portion that is formed by injection molding.

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Conclusion


4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh
08/07/06

WBA


JENNIFER C. MCNEIL
SUPERVISORY PATENT EXAMINER
8/9/06